I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: MAIL STOP PETITION, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450, ON THE DATE INDICATED BELOW.

BY: Jeanette Caufield DATE: January 14, 2005

MAIL-STOP PETITION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re:	Patent Application of MICHAEL ECONS, *et al.*	: Group Art Unit: 1647
Appln. No.:	09/901,938	: Examiner: C. Saoud
Filed:	July 10, 2001	: Attorney Docket No. 053884-5001
For:	NOVEL FIBROBLAST GROWTH FACTOR (FGF23) AND METHODS OF USE	:

PETITION UNDER 37 C.F.R. § 1.59(B) TO EXPUNGE INFORMATION OR COPY OF PAPERS IN APPLICATION

Mr. William R. Dixon, Jr.
Special Program Examiner
Director, Technology Center 1600
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Mr. Dixon:

At the recommendation of Examiner Jasmine Chambers, and in accordance with 37 C.F.R. § 1.59(b), Applicants respectfully request that the Interview Summary mailed by the Office on June 22, 2004, in connection with the above-captioned patent application be expunged from the file because the Summary is not accurately reflective of the conversation that occurred. Applicants respectfully submit that the wording of the Interview Summary mischaracterizes the actual discussions that transpired, and that the Interview Summary appears to contain personal comments and viewpoints of the Examiner rather than merely a factual account of the interview.

Further, if a factual account of the interview is to be made of record in this application, then it should state that "Attorney Doyle was willing to authorize the Examiner's proposed amendment to claim 12, provided that the finality of the rejection was first withdrawn."

It is inaccurate to state that Attorney Doyle "[R]efused to authorize an Examiner's amendment to allow the instant application and insisted upon reopening prosecution."

In the alternative, Applicants respectfully suggest the following wording for an accurate Interview Summary Statement:

> "This Interview Summary makes record of the substance of one telephone voicemail left with Examiner Saoud on June 14, 2004, and one telephone interview between Examiner Saoud and Applicants' representatives, Dr. Kathryn Doyle and Dr. Thomas Sossong, on June 15, 2004, as well as the subsequent interview with the Examiner's Supervisor, Examiner Gary Kunz, on June 16, 2004. The substance of this telephone interview included the Final Office Action issued by Examiner Saoud on May 5, 2004, in connection with the above-referenced patent application.
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> On June 14, 2004, Dr. Kathryn Doyle left a voicemail for Examiner Saoud, requesting that the finality of the May 5, 2004, Office Action be withdrawn, as the rejection levied against claims 12 and 33 in that Office Action had not previously been set forth by the Examiner, making the rejection a new rejection based in no part on Applicant's Amendment or response.
>
> On June 15, 2004, Examiner Saoud left a voicemail with Dr. Doyle stating that the Examiner's prior failure to set forth the rejection of claims 12 and 33 was merely a "typographical error," thereby refusing to withdraw the finality of the Office Action issued on May 5, 2004.
>
> During the telephonic interview with Examiner Saoud on June 15, 2004, and later with Examiner Kunz on June 16, 2004, the basis for the "finality" of the Office Action was discussed. Specifically discussed was the fact that the Office Action was incorrectly classified as "final," due to new grounds for rejection raised by the Examiner in the Final Office Action. MPEP 706.07(a) states, in relevant part, that a second office action shall <u>not</u> be declared final "where the Examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement."
>
> Attorney Doyle was willing to authorize the Examiner's proposed Amendment to claim 12 provided that the finality of the rejection was first withdrawn. Examiner Saoud and later Examiner Kunz initially declined to withdraw the finality of the rejection on the grounds that "Applicants should have known to amend claim 12 when they amended claim 1," based on the Examiners' views that claim 12 and claim 1 were substantially similar. However, because neither Applicants' amendments nor the submission of an IDS were the basis for Examiner Sauod's classification of the Office Action as final, Examiner Kunz stated that the finality of the present Office Action will be withdrawn and that Examiner Saoud will issue a second non-final Office Action."

In accordance with 37 C.F.R. § 1.17(h), the petition fee of $130.00 is being simultaneously submitted herewith.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees which may be required for this petition, including any required extension of time fees, or credit any overpayment to Deposit Account No. **50-0310**.

Respectfully submitted,

MICHAEL ECONS *ET AL.*

14 JAN-2015
(Date)

By: _____

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